

ORIGINAL

Decision No. 63441

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's )  
own motion into the operations, )  
rates and practices of RUSSELL )  
TEOMAS PHILLIPS. )

Case No. 7179

J. Montgomery Carter and William H. Kessler, for  
respondent.  
William C. Bricca and Arthur J. Lyon, for the  
Commission staff.

O P I N I O N

On August 22, 1961, the Commission instituted its investigation into the operations, rates and practices of Russell Thomas Phillips. Respondent is engaged in the business of transporting property over the public highways as a radial highway common carrier.

Pursuant to the order instituting investigation, public hearing was held before Examiner Martin J. Porter on December 28, 1961 at Fresno, on which date the matter was continued so that respondent's counsel could evaluate the Commission staff's evidence and decide whether to request further hearing. By letter dated January 5, 1962, the respondent's counsel informed the Commission that no further hearing was desired. Accordingly, the matter is now ready for decision based on the Commission staff's evidence.

The purpose of this investigation is to determine whether respondent, in violation of Sections 3664 and 3667 of the Public Utilities Code, has charged, demanded and received a lesser

compensation for the transportation of property than the applicable charges prescribed in Minimum Rate Tariff No. 2 and supplements thereto.

### Facts

The Commission staff presented evidence to the effect that since April 1958, respondent transported shipments of beer at rates less than the minimum prescribed in Minimum Rate Tariff No. 2. Furthermore, it was shown that with respect to such transportation, respondent deviated from the rules of the Commission applicable to pickup of "multiple lots".

More specifically, the evidence showed that undercharges on certain shipments resulted as follows:

<u>Frt. Bill No.</u>	<u>Date</u>	<u>Charge Assessed or Collected by Respondent</u>	<u>Correct Charge</u>	<u>Undercharge</u>
1724 & 1725	12/ 9/60	\$235.86	\$275.86	\$ 40.00
1726	12/12/60	233.83	419.21	185.38
1722	12/ 1/60	119.05	133.84	14.79
1723	12/ 9/60	123.87	133.87	10.00
1574	12/27/60	125.28	135.28	10.00
1575	1/ 5/61	235.86	275.86	40.00
1576	1/ 9/60 (61)	241.29	420.00	178.71
1728 & 1729	1/16-17-18/61	352.46	485.59	133.13
1578	1/ 9/61	133.39	143.39	10.00
1581	1/25/61	144.15	154.15	<u>10.00</u>

Undercharges for these shipments amounted to ..... \$632.01

It was stipulated that Russell Thomas Phillips holds Radial Highway Common Carrier Permit No. 10-8318 and that he had been served with Minimum Rate Tariff No. 2, Distance Table No. 4 and applicable supplements thereto.

Findings and Conclusions

Based upon the evidence of record, the Commission finds and concludes that:

1. Respondent is engaged in the transportation of property over the public highways for compensation as a radial highway common carrier.

2. Between December 9, 1960 and January 25, 1961, respondent assessed and collected charges less than the applicable charges established by this Commission in Minimum Rate Tariff No. 2 which resulted in undercharges in the total amount of \$632.01.

3. Respondent violated Sections 3664 and 3667 of the Public Utilities Code by charging and collecting a compensation less than the prescribed minimum established by this Commission in Minimum Rate Tariff No. 2.

O R D E R

A public hearing having been held and based upon the evidence therein adduced,

IT IS ORDERED that:

1. Radial Highway Common Carrier Permit No. 10-8318 issued to Russell Thomas Phillips is hereby suspended for five consecutive days starting at 12:01 a.m., on the second Monday following the effective date of this order. Respondent shall not lease the equipment or other facilities used in operations under this permit for the period of the suspension or directly or indirectly allow such equipment or facilities to be used to circumvent the suspension.

2. Respondent shall post at his terminal and station facilities used for receiving property from the public for transportation, not less than five days prior to the beginning of the suspension period, a notice to the public stating that his radial highway common carrier permit has been suspended by the Commission for a period of five days. Within five days after such posting respondent shall file with the Commission a copy of such notice, together with an affidavit setting forth the date and place of posting thereof.

3. Respondent shall examine his records for the period from April 1, 1958 to the present time, for the purpose of ascertaining all undercharges that have occurred.

4. Within ninety days after the effective date of this decision, respondent shall complete the examination of his records required by paragraph 3 of this order and shall file with the Commission a report setting forth all undercharges found pursuant to that examination.

5. Respondent shall take such action, including legal action, as may be necessary to collect the amounts of undercharges found after the examination required by paragraph 3 of this order, and shall notify the Commission in writing upon the consummation of such collections.

6. In the event undercharges ordered to be collected by paragraph 5 of this order, or any part of such undercharges, remain uncollected one hundred twenty days after the effective date of this order, respondent shall file with the Commission, on the first Monday of each month thereafter, a report of the undercharges remaining to be collected and specifying the action taken

to collect such undercharges and the result of such action, until such undercharges have been collected in full or until further order of the Commission.

The Secretary of the Commission is directed to cause personal service of this order to be made upon respondent. The effective date of this order shall be twenty days after the completion of such service.

Dated at San Francisco, California, this 20<sup>th</sup> day of MARCH, 1962.

*Edward A. Rouse*

President

*John D. Hill*

*George T. Grover*

*Frederic B. Holhoff*

Commissioners

Commissioner C. Lyn Fox, being necessarily absent, did not participate in the disposition of this proceeding.